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SUBJECT:CAB FARE PROCEEDINGS

DOA NO. 145-TT

1. TO HIGH COMMISSIONER WINKEL. FOLLOWING IS STATUS OF
MICRONESIAN FARE PROCEEDINGS WITH CAB.

THE CAB'S ORDER TERMINATING ITS INVESTIGATION OF CONTINEN-
TAL'S INCREASED FARES ALLOWS THE FIRST PHASE OF THE
PROPOSED RESTRUCTURING OF FARES TO BECOME EFFECTIVE.
SHORT-HAUL FARE INCREASES WILL BE HELD TO 25 PERCENT. IN
SECOND PHASE, SCHEDULED TO TAKE EFFECT SEPTEMBER 1, THE FULL
INCREASE IN SHORT-HAUL FARES AND THE REDUCTION OF CERTAIN
LONG-HAUL FARES WILL BE IMPLEMENTED AS ORIGINALLY PROPOSED
BY CONTINENTAL.

ALTHOUGH NOT MENTIONED IN THE BOARD'S ORDER, CAB STAFF WAS
INSTRUCTED TO STUDY ALTERNATIVES TO THE CROSS SUBSIDIZATION
OF LONG-HAUL MARKETS BY SHORT-HAUL MARKETS WHICH IS INHER-
ENT IN CONTINENTAL'S NEW FARE STRUCTURE AND WHICH WILL BE
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AGGRAVATED IN PHASE TWO. IT DOES NOT APPEAR THAT THE

TRUST TERRITORY OR THE INTERIOR DEPARTMENT WILL HAVE ANY
FORMAL ROLE IN THE STUDY.

FROM THE VIEWPOINT OF THE TRUST TERRITORY, THE BOARD'S
ACTION APPEARS OBJECTIONABLE FOR A NUMBER OF PROCEDURAL
AND SUBSTANTIVE REASONS DISCUSSED IN THE FOLLOWING OUTLINE
OF A PETITION FOR RECONSIDERATION. THE BOARD INFREQUENTLY
GRANTS RECONSIDERATION, BUT THERE IS A STRONG POSSIBILITY

THAT RECONSIDERATION WOULD BE GRANTED IN THIS CASE'S CIRCUMSTANCES AND INVESTIGATION OF THE NEW FARES RE-INSTITUTED. PENDING SUCH INVESTIGATION, THE BOARD WOULD PROBABLY SUSPEND PHASE TWO FARES BUT WOULD PROBABLY RULE IT LACKED AUTHORITY TO SUSPEND THE PHASE ONE FARES BECAUSE THEY HAVE NOW GONE INTO EFFECT.

AFTER A HEARING AND INVESTIGATION, THE BOARD COULD TAKE WHATEVER ACTION IT DEEMED APPROPRIATE WITH REGARD TO THE PHASE ONE OR PHASE TWO FARES. IN VIEW OF THE CONCERNS PREVIOUSLY EXPRESSED BY THE BOARD REGARDING THE CROSS-SUBSIDIZATION OF CERTAIN LONGHAUL MARKETS, AN INVESTIGATION COULD BE EXPECTED TO FOCUS ON THIS ISSUE. IT MAY ALSO BE POSSIBLE TO INVESTIGATE THE CARRIER'S OVERALL REVENUE NEED (WHICH DOES NOT APPEAR TO JUSTIFY THE FULL 15 PERCENT FARE INCREASE), ALTHOUGH THE BOARD MAY EXCLUDE THIS ISSUE ON THE GROUND IT WAS SETTLED IN THE BOARD'S ORIGINAL SUSPENSION ORDER.

SINCE IT IS DOUBTFUL THAT THE BOARD COULD SUSPEND THE PRESENT PHASE ONE FARES PENDING INVESTIGATION, REINSTITUTION OF THE INVESTIGATION WILL NOT DELAY CONTINENTAL IN RECEIVING UNCLASSIFIED

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ING THE REVENUE INCREASE WHICH IT CLAIMS IS A PREREQUISITE FOR INTRODUCING A THIRD AIRCRAFT IN MICRONESIA. NEITHER WOULD A SUSPENSION OF THE PHASE TWO FARES AFFECT CONTINENTAL'S REVENUE, SINCE BOTH PHASE ONE AND PHASE TWO ARE CALCULATED TO PROVIDE A 15 PERCENT INCREASE.

IF A RECONSIDERATION PETITION IS NOT FILED OR IS DENIED, THE ONLY RECOURSE FOR THE TRUST TERRITORY WOULD BE TO FILE A TIMELY COMPLAINT AND REQUEST FOR SUSPENSION OF THE PHASE TWO FARES. A COMPLAINT FILED BY JULY 18, 1978, WOULD BE TIMELY IN THE TECHNICAL SENSE, THE BOARD MIGHT NOT LOOK WITH FAVOR ON DELAYED OBJECTIONS TO FARES WHICH WERE REVIEWED AND APPROVED ON ITS ORDER OF APRIL 14, 1978. IN ADDITION, SUCH A COMPLAINT WOULD PRESUMABLY BE LIMITED TO THE MERITS OF THE PHASE TWO FARES AND COULD NOT PROPERLY

RAISE THE PROCEDURAL IRREGULARITIES REFLECTED IN THE BOARD'S LATEST ORDER. FOR THESE REASONS WE ASK YOUR REVIEW OF FOLLOWING PETITION OUTLINE AND YOUR CABLED ADVICE WHETHER TO FILE OR NOT. DEADLINE FOR FILING IS MAY 8 AND WE NEED YOUR RESPONSE BY MAY 3 WASHINGTON TIME IF WE ARE TO FILE. PETITION OUTLINE FOLLOWS:

QUOTE. BY ORDER 78-3-69, THE BOARD AGAIN SUSPENDED CONTINENTAL'S FARE PROPOSAL FOR INVESTIGATION. UPON REVIEW OF THE CARRIER'S NEW TARIFF FILING AND SUPPLEMENTARY JUSTIFICATION, THE BOARD FOUND THAT THE PROPOSED FARE STRUC-

TURE DEVIATED SUBSTANTIALLY FROM ITS ALLEGED COST STRUCTURE AND WOULD INCREASE FARES IN MARKETS WHERE THEY WERE ALREADY ABOVE COST. THE TRUST TERRITORY OF THE PACIFIC ISLANDS AND THE DEPARTMENT OF THE INTERIOR WERE EXPRESSLY MADE PARTIES TO THE INVESTIGATION.

DESPITE THE SERIOUS ISSUES OF EQUITY AND COST JUSTIFICATION CITED IN THE BOARD'S TWO SUSPENSION ORDERS, THE BOARD BY ORDER 78-4-82 HAS TERMINATED THE INVESTIGATION WITHOUT UNCLASSIFIED

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HEARING AND WITHOUT RECEIPT OF FORMAL EVIDENCE AND HAS ALLOWED THE FARE INCREASE AND THE FIRST PHASE OF THE PROPOSED FARE STRUCTURE TO TAKE EFFECT. AS DISCUSSED IN MORE DETAIL BELOW, THE SAID ORDER IS BASED ON FACTORS WHICH HAVE NOT BEEN FULLY OR PROPERLY CONSIDERED; CONTAINS MATERIAL FINDINGS WHICH ARE ERRONEOUS AND ARE NOT SUPPORTED BY EVIDENCE IN THE RECORD; FAILS TO MAKE CLEAR AND EXPLICIT FINDINGS ON MATERIAL ISSUES; AND REFLECTS IMPROPER EX PARTE COMMUNICATIONS AND REPRESENTATIONS.

1. THE BOARD'S ORDER IS BASED ON AN ERRONEOUS VIEW OF THE RELATIVE IMPORTANCE OF THE HONOLULU GATEWAY AS COMPARED WITH THE GUAM AND SAIPAN GATEWAYS. THE BOARD FAILS TO RECOGNIZE THAT TRAFFIC THROUGH THE HONOLULU GATEWAY ACCOUNTS FOR ONLY 20 PERCENT OF THE O-D PASSENGERS IN MICRONESIAN SERVICE, COMPARED WITH THE 58 PERCENT WHICH TRAVEL VIA THE GUAM AND SAIPAN GATEWAYS.

2. THE BOARD SIMILARLY ERRS IN STATING THAT HONOLULU-GUAM CONSTITUTES CONTINENTAL'S "PRIMARY LONG-HAUL MARKET." IN FACT, THERE ARE AT LEAST FIVE OTHER MICRONESIAN MARKETS OVER 900 MILES IN DISTANCE WHICH ACCOUNT FOR A VOLUME OF TRAFFIC COMPARABLE TO GUAM-HONOLULU. OF THE TOTAL O-D TRAFFIC IN CONTINENTAL'S MICRONESIAN SERVICE, THE HONOLULU-GUAM MARKET ACCOUNTS FOR LESS THAN TWO PERCENT (2,780 OF 158,446).

3. THE BOARD'S ORDER ADOPTS A THEORY OF REVENUE MAXIMIZATION WHICH HAS ABSOLUTELY NO EVIDENTIARY OR FACTUAL SUPPORT IN THE RECORD. THE BOARD CITES AND ACCEPTS A "BELIEF" OF CONTINENTAL THAT IT CAN MAXIMIZE REVENUES ONLY BY MATCHING PAN AMERICAN'S FARE IN THE GUAM-HONOLULU MARKET AND BY HOLDING FARES BELOW COST IN OTHER LONG-HAUL HONOLULU MARKETS. NOT ONLY IS THE RECORD DEVOID OF ANY FACTS OR ANALYSIS TO SUPPORT SUCH A THEORY, BUT CONTINENTAL'S JUSTIFICATIONS AND FORMAL FILINGS FAIL EVEN TO ASSERT THE RATIONALE OF MEETING COMPETITION AND MAXIMIZING REVENUES

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LULU MARKETS. NOT ONLY IS THE RECORD DEVOID OF ANY FACTS OR ANALYSIS TO SUPPORT SUCH A THEORY, BUT CONTINENTAL'S JUSTIFICATIONS AND FORMAL FILINGS FAIL EVEN TO ASSERT THE RATIONALE OF MEETING COMPETITION AND MAXIMIZING REVENUES

ATTRIBUTED TO THE CARRIER BY THE BOARD.

4. IN TRUTH, IT APPEARS THAT THE UNSUPPORTED THEORY OF REVENUE MAXIMIZATION WAS ADVANCED BY CONTINENTAL IN EX PARTE COMMUNICAITON BETWEEN THE CARRIER AND THE BUREAU WHICH RECOMMENDED TERMINATION OF THE SUSPENSION AND INVESTIGATION. AT THE BOARD'S CONSIDERATION OF THIS MATTER IN OPEN MEETING APRIL 14, 1978, THE DIRECTOR OF THE BUREAU OF PRICING AND DOMESTIC AVIATION STATED THAT CONTINENTAL HAD ASSERTED THE NEED TO MAXIMIZE REVENUE AND TO MATCH PAN AMERICAN'S FARE IN RESPONSE TO AN INQUIRY FROM THE BUREAU. NEITHER THE TRUST TERRITORY NOR THE DEPARTMENT OF THE INTERIOR WAS PRIVY TO THESE OFF-THE-RECORD COMMUNICATIONS, AND NEITHER PARTY WAS AFFORDED ANY OPPORTUNITY TO CHALLENGE OR REBUT CONTINENTAL'S APPARENTLY UNSUPPORTED REPRESENTATIONS.

5. THE ABSENCE OF FACTUAL EVIDENCE AND THE RELIANCE ON EX PARTE REPRESENTATIONS ON THE QUESTION OF REVENUE MAXIMIZATION GO TO THE HEART OF THE SERIOUS ISSUES OF COST JUSTIFICATION WHICH TWICE PROMPTED THE BOARD TO SUSPEND CONTINENTAL'S PROPOSED FARES. THE EFFECT OF THE BOARD'S ORDER IS TO PERMIT DELIBERATE CROSS-SUBSIDIZATION OF LONG-DISTANCE TRAFFIC BY SHORT-DISTANCE TRAVELERS. SUCH A SERIOUS DEPARTURE FROM BOARD POLICY SHOULD BE PERMITTED ONLY AFTER CAREFUL INVESTIGATION OF THE ALLEGED JUSTIFICATION, NOT ON THE BASIS OF INFORMAL, UNSUPPORTED, SELF-SERVING CARRIER REPRESENTATIONS.

6. ASIDE FROM THE MATERIAL PROCEDURAL IRREGULARITIES CITED ABOVE, THE BOARD'S APPARENT FINDING OF REVENUE MAXIMIZATION FAILS TO CONSIDER THE REVENUE IMPACT OF THE UNCLASSIFIED

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ABOVE-COST FARES PROPOSED FOR THE MORE HEAVILY TRAVELED GUAM AND SAIPAN MARKETS. THE BOARD MAKES NO EXPLICIT FINDING CONCERNING THE PRICE-ELASTICITY OF THE MICRONESIAN MARKETS. IF THE SHORT-HAUL GUAM AND SAIPAN MARKETS ARE PRICE ELASTIC, THE NEW FARE STRUCTURE COULD DECREASE

TRAFFIC AND REVENUE INSTEAD OF MAXIMIZING REVENUE AS ALLEGED BY CONTINENTAL. IN THIS REGARD, THE BOARD HAS NOT ADEQUATELY SATISFIED ITS STATUTORY OBLIGATION TO CONSIDER THE IMPACT OF FARES ON TRAFFIC (49 U.S.C. 1482(E)(1)).

7. THE BOARD FURTHER ERRED IN FAILING TO EXAMINE OR EVALUATE CONTINENTAL'S UNSUPPORTED CLAIM THAT COMPETITIVE CONSIDERATIONS REQUIRE IT TO MATCH PAN AMERICAN'S FARE IN THE HONOLULU-GUAM MARKET. CONTINENTAL'S MULTI-STOP SERVICE WITH NARROW-BODIED AIRCRAFT IS FUNDAMENTALLY DIFFERENT FROM PAN AMERICAN'S NON-STOP WIDE-BODIED SERVICE, AND IS PRESUMABLY ATTRACTIVE ONLY TO TRAVELERS WITH

AN INTEREST IN SEEING THE INTERMEDIATE POINTS. THE BOARD'S ORDER DOES NOT ADEQUATELY ADDRESS THE QUESTION WHETHER THIS UNIQUE SERVICE COULD COMMAND A COST-BASED FARE HIGHER THAN THE FARE FOR PAN AMERICAN'S MORE ECONOMIC NON-STOP ROUTING.

8. WHATEVER COMPETITIVE CONSIDERATIONS MAY APPLY IN THE HONOLULU-GUAM MARKET, THE BOARD ERRED IN ACCEPTING CONTINENTAL'S CLAIM THAT IT MUST HOLD FARES IN THE OTHER HONOLULU MARKETS AT OR BELOW PAN AMERICAN'S GUAM-HONOLULU FARE. IN FACT, CONTINENTAL'S MULTI-STOP HONOLULU SERVICE OFFERS A SIGNIFICANT NON-PRICE ADVANTAGE FOR TRAVELERS TO AND FROM THE INTERMEDIATE ISLANDS, WHO MUST FLY TO GUAM AND THEN BACK-HAUL IN ORDER TO USE PAN AMERICAN. MOREOVER, SINCE PASSENGERS USING PAN AMERICAN'S SERVICE MUST UNCLASSIFIED

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PAY THE LOCAL FARE TO GUAM PLUS THE GUAM-HONOLULU FARE, IT APPEARS THAT AIR MICRONESIA COULD REMAIN PRICE-COMPETITIVE USING A FARE WHICH EXCEEDS PAN AMERICAN'S FARE FOR THE GUAM-HONOLULU SEGMENT.

9. THE BOARD'S ORDER MISAPPLIES THE IMPORTANT POLICY OF ENCOURAGING TOURIST DEVELOPMENT. IN PURPORTING TO FOSTER TOURISM BY PERMITTING BELOW-COST FARES THROUGH THE HONOLULU GATEWAY, THE BOARD'S ORDER WOULD DISCOURAGE THE MORE SIGNIFICANT FLOW OF TOURISTS USING THE GUAM AND SAIPAN GATEWAYS BY ALLOWING CONTINENTAL TO CHARGE ABOVE-COST FARES. DURING THE PERIOD (BLANK), ONLY (BLANK) TOURISTS ENTERED MICRONESIA VIA HONOLULU, COMPARED WITH (BLANK) WHO ENTERED VIA GUAM AND SAIPAN. (OUR DOTA NO. 144-TT REQUESTED INFO TO DEVELOP THIS POINT).

10. IN APPROVING THE CROSS-SUBSIDIZATION OF LONG-HAUL HONOLULU FARES, THE BOARD FAILS TO ADDRESS THE UNFAIR BURDEN WHICH WILL BE PLACED ON PASSENGERS WHO TRAVEL OVER SHORT DISTANCE SEGMENTS WITH ABOVE-COST FARES AS PART OF

LONGER DISTANCE JOURNEYS VIA THE GUAM AND SAIPAN GATEWAYS. THUS TOURISTS FROM JAPAN, FOR EXAMPLE, WILL BE CALLED UPON TO CROSS-SUBSIDIZE PASSENGERS ENTERING MICRONESIA THROUGH THE HONOLULU GATEWAY.

11. IN ADDITION TO INHIBITING TOURISM, THE CROSS-SUBSIDIZATION APPROVED BY THE BOARD WILL UNDULY BURDEN RESIDENTS OF MICRONESIA WHO WILL BE REQUIRED TO PAY ABOVE-COST FARES FOR INTER-ISLAND TRAVEL WITHIN MICRONESIA. CROSS-SUBSIDIZATION OF THIS NATURE IS AN ABUSE OF CONTINENTAL'S MONOPOLY IN MICRONESIA AND CANNOT BE JUSTIFIED BY THE CARRIER'S QUESTIONABLE DESIRE TO CHARGE BELOW-COST FARES WHERE IT PERCEIVES COMPETITION FROM PAN AMERICAN.

12. THE BOARD HAS MADE NO EXPLICIT FACTUAL FINDING SHOW-
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ING THAT THE INCREASED FARES WOULD PRODUCE A LAWFUL AND REASONABLE RETURN ON INVESTMENT. THE ONLY RATE OF RETURN ANALYSIS UNDERTAKEN BY THE BOARD IS IN ITS ORIGINAL ORDER (ORDER 78-1-92) SUSPENDING CONTINENTAL'S INITIAL FARE PROPOSAL. THAT ANALYSIS SHOWED THAT THE PROPOSED FARES WOULD PRODUCE A RETURN IN EXCESS OF THE BOARD'S TWELVE PERCENT STANDARD BASED ON ADJUSTED OPERATING RESULTS FOR THE YEAR ENDED SEPTEMBER 1977. WHILE THE BOARD NOTED IN THAT ORDER THAT CONTINENTAL WAS EXPERIENCING A HEAVY OPERATING LOSS IN THE FOURTH QUARTER OF 1977, THE BOARD HAS NOT UPDATED ITS RATE OF RETURN ANALYSIS IN ANY OF ITS SUBSEQUENT ORDERS, INCLUDING THE ORDER (ORDER 78-4-82) WHICH HAS ALLOWED THE INCREASED FARES TO TAKE EFFECT. THUS, THE BOARD HAS MADE NO RATE OF RETURN ANALYSIS WHICH SPECIFICALLY APPLIES TO THE REVISED PHASE ONE AND PHASE TWO FARES WHICH ARE NOW AT ISSUE.

13. FURTHERMORE, THE BOARD HAS FAILED TO ADJUST ITS ORIGINAL ROI ANALYSIS TO CORRECT FOR ERRORS IN THAT ANALYSIS WHICH CONTINENTAL HAS ACKNOWLEDGED. IN THE SUPPLEMENTARY JUSTIFICATION WHICH ACCOMPANIED CONTINENTAL'S REVISED TARIFF FILING, THE CARRIER POINTED OUT THAT THE BOARD'S ANALYSIS IN ORDER 78-1-92 DOUBLECOUNTED INTEREST EXPENSES OF 223,000 DLRS, IGNORED THE EFFECT OF A PROPOSED TEN PERCENT INCREASE IN FREIGHT RATES, AND ERRONEOUSLY INCLUDED 146,000 DLRS IN START-UP COSTS ASSOCIATED WITH CONTINENTAL'S NEW SAIPAN-TOKYO ROUTE.

14. IN ADDITION TO THE ERRORS ACKNOWLEDGED BY CONTINENTAL, THE BOARD'S ORIGINAL RETURN ON INVESTMENT ANALYSIS ALSO OVERSTATED CONTINENTAL'S DEPRECIATION BY FAILING TO

ADJUST THE DEPRECIATION ACCOUNT TO CORRESPOND WITH THE
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BOARD'S ADJUSTMENT OF THE CARRIER'S INVESTMENT BASE. THE BOARD ALLOCATED 72.4 PERCENT OF CONTINENTAL'S INVESTMENT BASE IN THE PACIFIC TO MICRONESIA AND ALLOCATED THE BALANCE OF 27.6 PERCENT TO THE NEWLY-INSTITUTED TOKYO-SAIPAN

SERVICE. HOWEVER, THE BOARD FAILED TO MAKE ANY CORRESPONDING ALLOCATION OF DEPRECIATION EXPENSE BETWEEN THE TWO SERVICE SEGMENTS, THEREBY ERRONEOUSLY CHARGING MICRONESIA OPERATIONS WITH THE DEPRECIATION OF INVESTMENT ALLOCATED TO THE TOKYO-SAIPAN ROUTE.

15. THE BOARD'S ORIGINAL RATE OF RETURN ANALYSIS WAS

BASED ON A FAULTY LOAD FACTOR ASSUMPTION. THAT ANALYSIS RELIED ON OPERATING RESULTS FOR THE YEAR ENDED SEPTEMBER 1977, DURING WHICH CONTINENTAL'S MICRONESIA OPERATIONS EXPERIENCED AN AVERAGE LOAD FACTOR OF 56.8 PERCENT. HOWEVER, SINCE THE CONCLUSION OF THAT BASE YEAR, CONTINENTAL HAS COMMENCED SERVICE OF THE TOKYO-Saipan EXTENSION AND HAS REDUCED THE AMOUNT OF CAPACITY OFFERED IN MICRONESIA. THIS MEANS THAT THE CARRIER IS NOW IN A POSITION TO ACHIEVE HIGHER LOAD FACTORS THAN WERE ACHIEVED DURING THE BASE YEAR. IN FACT, CONTINENTAL PROJECTS A PASSENGER LOAD FACTOR OF 63.2 PERCENT FOR 1978 IN MICRONESIAN SERVICE. BY FAILING TO ADJUST FOR THE HIGHER LOAD FACTORS RESULTING FROM REDUCED CAPACITY, THE BOARD'S ANALYSIS COMPOUNDS ITS UNDERSTATEMENT OF ROI.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THE TRUST TERRITORY AND THE DEPARTMENT OF THE INTERIOR RESPECTFULLY PETITION THE BOARD TO RECONSIDER ORDER 78-4-82 AND, UPON RECONSIDERATION, TO REINSTITUTE THE INVESTIGATION AND SUSPENSION OF FARES VACATED BY THE SAID ORDER. UNQUOTE. MRS. RUTH G. VAN CLEVE, DIRECTOR, OTA, SENDS. VANCE

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